IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

CRL.A.No. 528 of 2002()

CC.468/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA .
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APPELLANT: COMPLAINANT

T.I. ALIAS S/O. ISSAC, CHITATHUKUDIYIL HOUSE, MARADI VILLAGE, RAMANGALAM KARA.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: ACCUSED & STATE
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1. **K.A.THOMAS, KANNANTHARA HOUSE, KURICHI VILLAGE, ITHITHANAM KARA, MALAKUNNAM P.O., CHANGANACHERRY.**

2. **THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SRI.M.P.MADHAVANKUTTY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K.R. UDAYABHANU, J.

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CRL.A.NO. 528 OF 2002

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DATED THIS THE 10th October 2007

Judgment

The appellant is the complainant in C.C.No.468/1998 in the file of the Judicial Magistrate of the First Class-I, Muvattupuzha with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The case of the complainant is that the accused borrowed a sum of Rs.2 lakhs and issued the impugned cheque for the above amount. When the cheque was presented for encashment, it was dishonoured for want of funds in the account of the accused. Lawyer notice sent was received but not replied to nor was the amount paid. PW1, the complainant has deposed with respect to the execution of cheque, dishonour of the same and issuance of the lawyer notice and has also proved Exts.P1 to P7 documents in this regard. PW2, the Branch Manager of the Sate Bank of Travancore has proved Ext.P6 ledger extract of the account of the accused which would show that the cheque was returned for want of funds in the account of the accused.

3. The case set up by the defence is that vide the statement and when questioned under Section 313 that the cheque happened to be issued as security for the hire purchase transaction with the complainant regarding the purchase of a bus by the son of the complainant. It is the case that when the bus was sold by the son of the accused, the complainant insisted for a blank cheque from the accused and the same has been misused. Dws.1 and 2 were examined in support of the case set up by the defence. The version of Dws.1 and 2 are contradictory as to the occasion stated when the alleged blank cheque was issued. DW1 has stated that he had purchased the vehicle that was in the possession of the accused after he sold the same to one Jose (DW2). It is stated that one Sukumaran, R.C. owner had availed the hire purchase facility from the complainant and in order to sustain the above facility, the accused and Dws. 1 and 2 met the complainant and the complainant demanded for blank cheque leaf and one signed stamp paper and another blank signed paper. At the time the signed blank cheque of the accused was also handed over. On the other hand, DW2 has stated that he purchased the vehicle from the accused and the same was sold to DW1 and at the time he along with DW1 and the son of the accused went to Pw1 for

getting the HP loan transferred in his name and then PW1 demanded additional security and at that time the accused demanded back the blank cheque leaf given by him which is in the possession of PW1 and that PW1 declined to give the same mentioning that before completing the transaction the cheque leaf will not be returned. Evidently the version of the accused in Section 313 statement and that of Dws.1 and 2 are all contradictory.

4. It is submitted that with respect to the dealings in between the accused and the complainant and the probability of the complainant giving a loan of Rs.2 lakhs that the complainant is engaged in hire purchase finance business and that the accused is a broker and that they had acquaintance earlier and in such circumstances providing loan to such a person need not be disbelieved. I find that in view of the patent contradictions in the version of the accused, Dw.1, and Dw2, the statutory presumptions stand unrebutted. The finding of the court below is set aside. The accused is convicted for the offence under section 138 of the Negotiable Instruments Act. The accused is sentenced to undergo imprisonment till the rising of the court and to pay Rs.2,00,000/- (Rupees two lakhs only) as compensation to Pw1 and in default to

undergo simple imprisonment for three months. The accused/respondent is granted six months time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate-I, Muvattupuzha on 10th April 2008 to receive sentence. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 528 OF 2002-B

JUDGMENT

10-10-2007